respect of the delivery of goods under the agreements of hire-purchase. I need not go into the facts of the case as they are fully set out in the judgment of the learned trial Judge.

The only question this Court has to decide is whether the property passes to the hirer under the 1960 agreement entered into between the parties. Clause 5 of the said agreement gives the hirer the option to terminate it which satisfies the test laid down in the case of *Helby* v. *Matthews*.[4] In my view the Court must look into all the surrounding circumstances to ascertain the real intention of the parties (see *Polsky* v. *S. & A. Services Ltd.*[5]). In my opinion this is what the trial Judge did. We also look into the surrounding circumstances and see nothing to detract from the face value of the 1962 agreement.

The appellant in this case speaks English and it is clear from what she herself said that she fully appreciated the nature of the agreement. According to her in her evidence she said:—

"Yes, plaintiff could have taken possession of the articles if they wanted. I was and am fully aware of this. Yes, I made several requests to Chong Phor not to take such action because of my business."

Once it has been established that it was a hire-purchase agreement it was open to the parties to modify the agreement in any way they see fit and this is the purpose of the 1962 agreement.

In any event the 1962 agreement was not a bill of sale as at the time of the agreement property was all the time vested in the respondents.

I would add that section 20 of the Sale of Goods Ordinance has nothing whatever to do with this case because it only applies to unconditional contract for the sale of goods and neither the 1960 nor the 1962 agreements were unconditional contracts for the sale of goods.

In the circumstances I would dismiss the appeal with costs.

Thomson L.P. (delivering oral judgment): I agree with what my Lord has said.

I have been unable to discover anything in the agreements themselves *in gremio* or in the surrounding circumstances to suggest that at any time the property in the items concerned passed from the respondents. In the circumstances there can be no question of any concealed bill of sale or anything of the sort and the parties were at perfect liberty to modify their original arrangements as they saw fit.

I can see no reason why this Court should interfere in any way.

The appeal should be dismissed with costs.

Tan Ah Tah J.: I concur.

Appeal dismissed.

Solicitors: *Dharmananda & Co.*; *Gibb & Co.*

WILLIAM JACKS & CO. (MALAYA) LTD. v. CHAN & YONG TRADING CO.

[O.C.J. (Gill J.) December 7, 1963]

[K.L. — Civil Suit No. 706 of 1862]

Partnership—Person holding out as partner—Liability of partners—Partner using goods for personal use—Minor partner—Whether Partnership liable—Whether minor partner liable if he does not repudiate on attaining majority.

Contracts (Malay States) Ordinance, 1950, ss. 137, 198, 199, 200, 201 and 217—Effect of provisions.

The plaintiffs claimed against the defendants the sum of $12,734.91 for goods sold and delivered by the plaintiffs to the defendants. The writ was served on Chan and Yong the partners of the defendant firm.. Yong did not take any steps to defend but Chan denied the plaintiffs' claim on the following grounds namely that (a) no firm by the name of Chan & Yong Trading Co. ever existed and that if such a company did exist he was not a partner thereof (b) he had not in any way represented or held himself out as partner of the said firm (c) the goods bought from the plaintiffs were for the personal use of Yong who was a minor and that therefore the partners were not liable.

Held: (1) Chan was a partner of "Chan & Yong Trading" and "Chan & Yong Construction" and on the evidence "Chan & Yong Trading Company" and "Chan & Yong Trading" were one and the same firm because there was no evidence that there were two separate firms by these two separate names;

(2) Chan represented himself to be a partner in the firm by approaching a salesman of the plaintiffs to ask for credit facilities with the plaintiff company, by registering the partnership with the Registrar of Businesses and by opening a banking account with his own money in the name of the partnership with the Bangkok Bank. Each mode of representation was sufficient to fix him with liability as a partner of the firm;

(3) the fact that Yong made use of the goods bought from the plaintiffs for his own purpose did not mean that the partnership and consequently the partners were not liable. Further as Yong had not taken any steps after attaining the age of majority to repudiate the partnership he was also liable as a partner of the firm.

Cases referred to:—

(1) *Bond* v. *Gibson and Jephson* (1808) 1 Camp. 184; 170 E.R. 923.

(2) *Bishop* v. *Tudor Estates* [1952] C.P.L. 807.

(3) *Gopi Mal Durga Das* v. *Jain Bank of India Ltd. Lahore* A.I.R. 1918 Lahore 269.

(4) *Parkash Chand* v. *Strauss & Co. Ltd. Karachi* A.I.R. 1928 Lahore 854.

CIVIL SUIT.

L. P. Thean for the plaintiffs.

M. J. Mathew for the defendants.

Cur. Adv. Vult.

Gill J.: This is a claim for $12,734.91 for goods sold and delivered by the plaintiff company to the defendant firm. The writ was served on two persons named Chan Yin Tee and Yong Yit Chong, both of whom are alleged to be the partners of the defendant firm. Yong Yit Chong has not taken any steps to defend the action, and indeed has given evidence in support of the plaintiffs' claim, but Chan Yin Tee denies the plaintiffs' claim upon a number of grounds.

The plaintiffs say that Chan Yin Tee and Yong Yit Chong met a salesman of their company in a coffee shop at Petaling Jaya and asked for credit facilities for the purchase of goods from the company. Chan Yin Tee denies that he was present at this meeting in the coffee shop at Petaling Jaya, but both Yong Yit Chong and Leong Wah say that he was present. Although Leong Wah did not appear to me to be a particularly intelligent witness, I am satisfied that the meeting as alleged did take place and that in consequence of this meeting Leong Wah obtained particulars as to the name and style of the firm under which Chan Yin Tee and Yong Yit Chong were trading and the name of their bankers. He caused a search to be made at the Registry of Businesses and obtained particulars of a firm registered as "Chan & Yong Trading" with Chan Yin Tee and Yong Yit Chong as its partners.

Leong Wah passed on all the information to Wong Ah Wah, an executive officer of the plaintiff company, who himself caused certain enquiries to be made, from which he was satisfied that there was a firm by the name of Chan & Yong Trading Company and that its bankers were the Bangkok Bank. He did not see either of the partners at that stage but saw them later. He did not rely on anything which Chan Yin Tee said to him about opening a credit account for the firm, but he relied on the information he had from the company's bankers as to the names of the partners of the firm. He also relied on his intelligence about the standing of the partners. Neither of the partners was known to him, but he knew of them. He knew Chan Yin Tee as a man of some financial standing, but he made no personal inquiries from him because he did not consider it necessary.

On the strength of all the information he had gathered, Wong Ah Wah recommended to his directors that an account be opened with the company in the name of the defendant firm with the normal credit facilities. The directors approved his recommendation and an account was opened in the name of the defendant firm. After the account was opened, goods were supplied to the defendant firm from 20th December, 1961 to 30th June, 1962, on which date there was a balance of $12,734.91 due to the plaintiff company for the goods supplied.

Chan Yin Tee's first contention is that no firm by the name of "Chan & Yong Trading Company" ever existed and that, if such a company did exist, he is not and has never been a partner in or in any other way associated with the said firm, nor has he ever in any way represented or held himself out as being a partner in the said firm. He has, however, admitted that he was a partner in a firm known as "Chan & Yong Trading" and in another firm known as "Chan & Yong Construction", both of which were registered. Chan & Yong Trading was in fact registered on 16th November, 1961. I am satisfied on the evdence before me that "Chan & Yong Trading Company" and "Chan & Yong Trading" are one and the same firm because there is no evidence that there were two separate firms by these two separate names. It may be argued that the name in which the account with Bangkok Bank was opened was "Chan & Yong Trading", but both the bankers and the plaintiff company knew and called it as "Chan & Yong Trading Company". In point of fact it was a trading kongsi or a trading firm or a trading company.

The plaintiffs have produced a bundle of delivery orders, some of which are in the name of Chan & Yong Company, some in the name of Chan & Yong Trading, some in the name of Chan & Yong Construction and one in the name of Chan & Yong. Whatsoever the name used, the plaintiffs had only one account in the name of "Chan & Yong Trading Company" and all supplies were made to this account. As stated by Wong Ah Wah in his evidence, to them the essential name was Chan & Yong. These delivery orders cover the period 6th March, 1962 to 30th June, 1962. Admittedly all these goods were ordered by Yong Yit Chong. There also appears to be no doubt that he made use of these goods for the purpose of a contract which he was then carrying out on his own, as he had had some trouble with Chan Yin Tee. And it is also clear from the evidence that at the time he ordered these goods he was a minor.

A great deal of evidence has been led about the quarrels which Chan Yin Tee and Yong Yit Chong had between themselves after the formation of the partnership. I do not propose to deal with it at great length, because in my opinion much of it is not relevant to the issues in this case. It seems clear that the partnership was formed for the purpose of building two houses in Petaling Jaya. Ultimately the contract for building the two houses was taken over by Yong Yit Chong himself from one Shun Yoke Hay. Yong Yit Chong alleges that the first progress payment of $9,000 on this contract was taken over by Chan Yin Tee and the amount never returned to him, but this is denied by Chan Yin Tee. On 29th November, 1961 Yong Yit Chong entered into some sort of agreement in Chinese with one Ng Soo with regard to masonry work at the two houses in Petaling Jaya. This document states, *inter alia*, that "with regard to Chan & Yong Building and Trading Company, from now on the whole of it shall be cancelled. This work, etc., shall be charged to the account of Y. C. Yong." Yong Yit Chong denies that these words were in the document when it was executed. There would appear to be some substance in what Yong Yit Chong says because the Chinese characters in the document, of which the words

quoted are the translation, appear to me to be written in different ink. Be that as it may, I do not think that this document can be treated as having had the effect of dissolving the partnership. There is evidence that Chan Yin Tee signed certain cheques on behalf of the partnership firm after the date of this document. In any event, no documents were filed in the Registry of Businesses as regards the termination of the partnership between Chan Yin Tee and Yong Yit Chong, nor did the plaintiff company have any notice of any termination of the partnership. There is also no evidence that Chan Yin Tee put out any advertisement in the papers to notify the public that he was no longer a partner of Chan & Yong Trading.

There is a great deal of controversy as to when a chop was made for the firm and which of the partners got it made. Admittedly no chop was produced when an account with the Bangkok Bank was opened and quite a number of the cheques were signed by Chan Yin Tee and Yong Yit Chong without there being any partnership chop on them. However, a chop did come into existence at some stage and a few of the cheques produced in this case do bear the signature of Chan Yin Tee within the chop. On the balance of probabilities, I am satisfied that Chan Yin Tee knew of the existence of a chop. The positions of the signatures quite clearly indicate that they were affixed on the dotted lines of the chop, which goes to show that the cheques must have been chopped before they were signed.

One of the issues in this case is whether Chan Yin Tee is liable as a partner or as a person holding himself out to be a partner at the material time. In this connection section 198 of the Contracts (Malay States) Ordinance, 1950 provides that a person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm. Section 199 of the Ordinance says that anyone consenting to allow himself to be represented as a partner is liable, as such, to third persons who on the faith thereof give credit to the partnership. As I have already stated, "Chan & Yong Trading" and "Chan & Yong Trading Company" were one and the same partnership firm. Chan Yin Tee represented himself to be a partner in this particular firm by approaching Leong Wah to ask for credit facilities with the plaintiff company, by registering the partnership with the Registrar of Businesses and by opening a banking account with his own money in the name of the partnership with the Bangkok Bank. Each mode of representation by itself was sufficient to fix him with liability as a partner of the firm.

The plaintiffs, before they approved an account to be opened for the partnership for the supply of goods on credit to the partnership, knew that Chan Yin Tee was a partner. As far as they were concerned, they were supplying the goods to "Chan & Yong Trading" or "Chan & Yong Trading Company", of which firm to their knowledge Chan Yin Tee and Yong Yit Chong were the partners. The fact that Yong Yit Chong made use of the goods bought from the plaintiffs for his own purpose does not mean that the partnership, and consequently the partners, are not liable. This is clear from the case of *Bond* v. *Gibson and Jephson* [1] which is an authority for the proposition that, where one of two partners, with the intention of cheating the other, purchases goods such as might be used in the partnership business which he instantly converts to his own separate use, the innocent partner is liable for the price of the goods without proof of any previous dealings between the parties, provided there is no collusion between him and the seller. Chan Yin Tee says that Yong Yit Chong fraudulently and dishonestly induced the plaintiff company to deliver goods to the firm in the belief that the partnership still existed after the date of dissolution. This may well be so, but there is no evidence that the plaintiffs knew of any fraud or dishonesty on the part of Yong Yit Chong or of the dissolution. There is also no evidence, apart from mere suspicion, that Yong Yit Chong and the plaintiff company acted in collusion to defraud Chan Yin Tee.

Chan Yin Tee further contends that he is not liable because he had ceased to have anything to do with the partnership before the goods were supplied by the plaintiff company, but section 217 of the Ordinance makes it clear that persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution. In *Bishop* v. *Tudor Estates*,[2] a brief report of which is contained in paragraph 2493 of the [1952] Current Law Year Book, a partnership in a firm of estate agents, which was registered under the Registration of Business Names Act, 1916, had been dissolved, but the business was carried on by one of the former partners. The Court of Appeal (Denning and Hodson L.JJ.) dismissing an appeal from Barry J. held that the other partner, C., who had failed to inform the Registrar of the dissolution, was liable for the return of a deposit on a house, the purchase of which had fallen through, paid to the firm subsequent to the dissolution of the partnership, on the ground that the plaintiff had seen a registration certificate in the name of two partners and therefore C. had held himself out as a member of the partnership and was liable under section 14 of the Partnership Act, 1890.

I now come to deal with the question of Yong Yit Chong's minority at the time of the formation of the partnership and the effect of his ordering the goods when he was still a minor.

As I have stated above, the plaintiffs supplied the goods to the defendant firm and not to Yong Yit Chong personally, and Yong Yit Chong ordered goods as agent of the firm. Section 137 of the Ordinance provides that, as between the principal and third persons, any person may become an agent, although a minor cannot become an agent, so as to be responsible to his principal. Under section 200 of the Ordinance, a person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm. Section 201 of the Ordinance says that a person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

The effect of the provisions of the Ordinance to which I have referred, may be stated to be as follows. A minor can be a partner in the limited sense that he can be admitted to the benefits of partnership. His share in the property of the firm, to the benefits of which he is admitted, is liable for the obligations of the firm, but he is not personally liable for such obligations. He can order goods as agent of the partnership, which in effect means as agent of the other partner or partners of the firm, so as to bind the firm or the partners with liability, without incurring personal liability. If on attaining the age of majority he does not repudiate the partnership within a reasonable time, he becomes liable for all obligations incurred by the partnership from the time he was admitted to the benefits of the partnership.

I find support for the above propositions of law in the Indian case of *Gopi Mal Durga Das* v. *Jain Bank of India Ltd. Lahore.*[3] In that case Durga Das, purporting to act on behalf of the firm Gopi Mal Durga Das, consisting of himself and his father Gopi Mal, applied for shares in the Jain Bank of India Limited and paid Rs. 40 with the application. The shares were duly allotted to the firm, and the letter of allotment was posted and presumably reached its destination. It was held that the fact that at the time of the application Durga Das was not *sui juris,* did not vitiate the contract between the Bank on one side and the firm on the other, and that the firm was liable on the shares. Durga Das was held equally liable because he did not give notice within reasonable time after attaining majority of his repudiation. In the case of *Parkash Chand* v. *Strauss & Co. Ltd., Karachi* [4] it was stated that a minor can be appointed an agent so as to bind the principal without incurring any personal liability and that it is the capacity of the principal to enter into a contract which determines the binding nature or otherwise of the contract.

In the present case Yong Yit Chong became entitled to the benefits of the defendant firm when the partnership was registered and when an account in the name of the partnership was opened with the Bangkok Bank. He ordered goods from the plaintiff company for the partnership. Whether he used the goods for the partnership or for himself is immaterial because the plaintiffs were supplying goods on his orders not to him personally but to the defendant firm. Yong Yit Chong was then a minor. As a minor partner he could, and in fact did, act as agent for the firm as well as the other partner. He could not then be made personally liable for the goods he ordered for the firm, but the firm was liable. He has since attained the age of majority and has not up to now repudiated the partnership. He is therefore now equally liable for the goods which were purchased during his minority.

In the result, upon consideration of the whole of the evidence in this case, I have come to the conclusions that "Chan & Yong Trading" and "Chan & Yong Trading Company" are one and the same partnership, that Chan Yin Tee who has been served with the writ in these proceedings as a partner of the defendant firm was at all material times the partner of the firm, that the defendant firm is indebted to the plaintiff company for the amount claimed and that both Chan Yin Tee and Yong Yit Chong are liable as partners to satisfy that debt. I must hasten to add that Yong Yit Chong becomes liable because he has not taken any steps since attaining the age of majority to repudiate the partnership. This action is brought against the firm. There will therefore be judgment against the firm for $12,734.91 and costs.

Judgment against the firm.

Solicitors: *Shook Lin & Bok*; *M. J. Mathew.*

KHALID PANJANG & ORS. v. PUBLIC PROSECUTOR (No. 2)

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Tan Ah Tah J.) January 6, 1964]

[K.L. — Federal Court Criminal Appeal No. 6 of 1963]

Criminal Procedure—Corroboration—Direction to jury—Inadequacy.

Precedent—Privy Council decision on Indian statutory provision in pari materia to local provision—Whether Malaysia Judge is bound by such Privy Council decision.

Evidence—Conspiracy—Evidence Ordinance, 1950, s. 10.

In this case the trial Judge on a point of corroboration directed the jury as follows:—

"The evidence of Che Bi, P.W. 28, has been challenged and all that I can say to you is this: you must check